

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**CM (M) No. 139/2026
CM No. 2455/2026
Caveat No. 813/2026**

Ishfaq Ahmad Ganai, Age: 31 Years
S/O Ghulam Mohammad Ganai
R/O Dangerpora, Sopore, District Sopore.

... Petitioner(s)

Through: -
Mr Shafqat Nazir, Advocate.
V/s

Tawheeda Begum
D/O Ghulam Nabi Parray
R/O Dargan, Pattan, District Baramulla.

... Respondent(s)

Through: -
Mr R. A. Dar, Advocate.

CORAM:

HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE.

(ORDER)
29.04.2026

Caveat No. 813/2026:

01. With the appearance of Mr R. A. Dar, the learned Counsel, on behalf of the Caveator/ Respondent, Caveat No. 813/2026 shall stand discharged, accordingly.

CM (M) No. 139/2026; CM No. 2455/2026:

02. The Petitioner, through the medium of this Petition invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India, seeks quashing of Order dated 15th of April, 2026 as also Order dated 22nd of April, 2026 passed by the Court of learned Additional District Judge, Sopore in a case titled '**Ishfaq Ahmad Ganai v. Tawheeda Begum**'.

03. The Petitioner, in this Petition, asserts that the Court below, in an Petition moved by the Petitioner under Section 25 of the Guardian and Wards Act, 1890 seeking custody of the minor child, had passed an Order dated 17th of July, 2025, whereby the said application was dismissed as not maintainable on merits, however, visitation rights were granted to the Applicant (husband)/ Petitioner herein under Section 12 of the Act of 1890 providing, *inter alia*, that the Applicant/ Petitioner herein shall have the right of overnight visitation with the minor child on every 1st and 3rd Saturday of each month; that the child shall be handed over to the Applicant/ Petitioner herein at 2:00 PM on Saturday and shall be returned to the Non-Applicant (mother)/ Respondent herein at 4:00 PM on the following Sunday.

04. The learned Counsel for the Petitioner submits that the aforesaid Order passed by the Court below with regard to visitation rights of the Petitioner herein were frustrated by the Respondent herein, inasmuch as, she had failed to handover the custody of the child to the Petitioner as per the arrangement ordered by the Court, however, the minor child was brought to the Court by the maternal grandfather and the Petitioner herein took over the child from him, however, on the next day, an application was moved by the Respondent herein before the Court that the child has been forcibly taken by the Petitioner herein from her custody and, vide the impugned Orders, coercive action was ordered by the Court below, even directing the police concerned to recover the child, besides, the Petitioner herein as well as his family was subjected to harassment, thereby constraining the Petitioner to file the instant Petition before this Court. He has further argued that since the Respondent herein, after divorce from the Petitioner herein, had contracted second marriage and has left the child with her parents and, in view of this fact, the Petitioner being the natural guardian has a preferential right of the custody of the child as a father. He has, thus, prayed that the impugned Orders having been passed by the Court below forcing recovery of the child with the intervention of the police, though unwarranted under the provisions of law, as such, same are required to be set aside.

05. Mr R. A. Dar, the learned Counsel for the Respondent, while appearing, submits that the Petition is misconceived, inasmuch as, no illegality or perversity has been pointed out in the Order impugned passed by the Court below, so as to seek intervention of this Court under its supervisory jurisdiction. He further submits that the matter has been listed before the Court below tomorrow and, as such, for production of the child by the Petitioner herein, further proceedings can be initiated by the Petitioner to which he may be entitled before the Court below.

06. Heard learned Counsel for the parties and perused the pleadings available on record.

07. Given the fact that the Petitioner herein had taken over the custody of the child on a Saturday from the child's maternal grandfather in compliance of the Order passed by the Court below, he was under a legal obligation to obey the said Order with regard to his visitation rights and handover the custody of the child back to the Respondent herein next day at 4:00 PM. The Petitioner, however, did not return the custody of the child to the Respondent, as such, on her approaching the Court below, the Court had intervened in the matter and had also issued directions to the police to enforce its Order. In the considered opinion of this Court, the Petitioner herein cannot be permitted to take advantage of his own wrong, so as to seek any protection from this Court.

08. Insofar as the contention of the learned Counsel for the Petitioner that in view of the subsequent marriage by the Respondent and also the custody of the child presently being with the maternal grandparents, the Petitioner is entitled to the custody of the child is concerned, the same cannot be done by the Petitioner at his own without having recourse to the law, as he is not prevented from moving a fresh Application/ Petition with this plea before the Court below or to seek review of the earlier orders passed by the Court below, while rejecting his plea for custody of the child and granting only visitation rights.

09. Viewed thus, since there is no illegality or perversity in the impugned Orders passed by the Court below, the present Petition is found to be misconceived and the same is, accordingly, **dismissed** in *limine*, along with the connected CM.

10. The Petitioner is directed to handover the custody of the child to the Respondent tomorrow in the Court below, where the case is stated to come up for consideration tomorrow and subject the child to the further orders of the Court below. The Petitioner shall also be entitled to work out other legal remedies available to him with regard to the custody of the child, if he so chooses.

SRINAGAR
April 29th, 2026
"TAHIR"

(M. A. CHOWDHARY)
JUDGE